



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

**[Docket Number USCG-2019-0602]**

**RIN 1625-AA08**

### **Special Local Regulation; Gulf of Mexico, Fort Myers Beach, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary special local regulation (SLR) for certain waters of the Gulf of Mexico adjacent to Fort Myers Beach, FL. This action is necessary to provide for the safety of race participants, participant vessels, spectators, and the general public on these navigable waters near Fort Myers Beach during the Roar Offshore boat race. This SLR establishes an enforcement area where all persons and vessels, except those persons and vessels participating in the high speed boat race, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area without obtaining permission from the Captain of the Port St. Petersburg or a designated representative.

**DATES:** This rule is effective daily from 9:30 a.m. until 5:30 p.m., on October 10, 2019 through October 12, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2019-0602 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Marine Science Technician First Class Michael Shackleford, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228-2191, e-mail Michael.d.shackleford@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

**II. Background Information and Regulatory History**

The Coast Guard is establishing this special local regulation without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. There is insufficient time to publish an NPRM and receive public comment as the Roar Offshore event will occur before the rulemaking process can be reasonably completed. Because of the dangers associated with high speed boat races, this regulation is necessary to provide for the safety of event participants, spectators, and vessels transiting the event area. For those reasons, it would be impracticable to

publish an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because prompt action is needed to ensure the safety of safety of race participants, participant vessels, spectators, and the general public.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1231). The purpose of the rule is to provide for the safety of life on navigable waters of the United States during the Roar Offshore High Speed Boat Race.

### **IV. Discussion of the Rule**

This rule establishes a special local regulation daily from 9:30 a.m. until 5:30 p.m., on October 10, 2019 through October 12, 2019. The special local regulation would establish an enforcement area where designated representatives may control vessel traffic as determined by the prevailing conditions. The enforcement area would cover all navigable waters in the Gulf of Mexico west of Fort Myers Beach inside a rectangle commencing at latitude 26°26'27" N, 081°55'55" W, thence to position 26°25'33" N, 081°56'34" W, thence to position 26°26'38" N, 081°58'40" W, thence to position 26°27'25" N, 081°58'8" W, thence to the original position at 26°26'27" N, 081°55'55" W. These coordinates are based on North American Datum 83 (NAD 83).

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the COTP St. Petersburg by telephone at (727) 824-7506, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the COTP St.

Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP St. Petersburg or a designated representative. The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and/or on-scene designated representatives.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the following reasons: (1) the special local regulation would be enforced in a small designated area off of Fort Myers Beach for only eight hours on three consecutive days; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the regulated area without authorization from the COTP St. Petersburg or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the regulated area or anchor in the spectator area, during the enforcement period if

authorized by the COTP St. Petersburg or a designated representative; and, (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and/or Broadcast Notice to Mariners via VHF radio on channel 16.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of federal employees who enforce, or otherwise determine compliance with, federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation issued in conjunction with a regatta or marine parade. It is categorically excluded from further review under paragraph L61 in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

## **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements,  
Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

### **PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T07-0602 to read as follows:

#### **§ 100.T07-0602 Gulf of Mexico, Fort Myers Beach, FL.**

(a) *Regulated area.* The regulations in this section apply to the following area: All waters of the Gulf of Mexico west of Fort Myers Beach contained within the following points: 26°26'27" N, 081°55'55" W, thence to position 26°25'33" N, longitude 081°56'34" W, thence to position 26°26'38" N, 081°58'40"W, thence to position 26°27'25" N, 081°58'8" W, thence back to the original position 26°26'27"N, 081°55'55"W. All coordinates are North American Datum 1983.

(b) *Definitions.* As used in this section:

(1) *Captain of the Port (COTP) St. Petersburg* means the Commander, U.S. Coast Guard Sector St. Petersburg or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

(2) *Designated Representative* means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP St. Petersburg in the



enforcement of the regulated areas.

(3) *Participant* means all persons and vessels registered with the event sponsor as a participant in the event.

(c) *Regulations.* (1) All non-participant persons and vessels are prohibited from entering transiting through, anchoring in, or remaining within the race area described in paragraph (a) of this section unless authorized by the COTP St. Petersburg or a designated representative.

(2) Designated representatives may control vessel traffic throughout the enforcement area as determined by the prevailing conditions.

(3) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the COTP St. Petersburg by telephone at (727) 824-7506, or a designated representative via VHF radio on channel 16. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP St. Petersburg or a designated representative.

(4) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners and/or Broadcast Notice to Mariners.

(d) *Enforcement period.* This section will be enforced daily from 9:30 a.m. until 5:30 p.m., on October 10, 2019, through October 12, 2019.

Dated: September 27, 2019.

Matthew A. Thompson  
Captain, U.S. Coast Guard  
Captain of the Port Saint Petersburg  
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